

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LINDA GABALDON.

No. 1:20-cv-1443-DAD-GSA (PC)

Plaintiff,

V.

J. BROWN, et al.,

**ORDER DENYING MOTION FOR
RECONSIDERATION**

(Doc. No. 17)

Plaintiff Linda Gabaldon is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 4, 2020, the assigned magistrate judge issued findings and recommendations, recommending that plaintiff's case be dismissed due to her failure to state a claim upon which relief may be granted, failure to comply with a court order, and failure to prosecute the case. (Doc. No. 13.) Plaintiff filed no objections.

On January 21, 2021, the undersigned adopted those findings and recommendations in full and dismissed the case due to plaintiff's failure to prosecute and failure to comply with a court order. (Doc. No. 15.) On March 29, 2021, plaintiff filed a motion to reopen her case, which the undersigned interprets as a motion for reconsideration of the January 21, 2021 order adopting the magistrate judge's findings and recommendations and dismissing this case due to plaintiff's

1 failure to prosecute and failure to comply with a court order . (Doc. No. 17.)

2 Federal Rule of Civil Procedure 60(b) governs the reconsideration of final orders of the
3 district court. Rule 60(b) permits a district court to relieve a party from a final order or judgment
4 on grounds of: “(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered
5 evidence . . .; (3) fraud . . . of an adverse party; (4) the judgment is void; (5) the judgment has
6 been satisfied . . . or (6) any other reason justifying relief from the operation of the judgment.”
7 Fed. R. Civ. P. 60(b). A motion under Rule 60(b) must be made within a reasonable time, in any
8 event “not more than one year after the judgment, order, or proceeding was entered or taken.” *Id.*

9 Reconsideration of a prior order is an extraordinary remedy “to be used sparingly in the
10 interests of finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of*
11 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (citation omitted); *see also Harvest v. Castro*, 531 F.3d
12 737, 749 (9th Cir. 2008) (addressing reconsideration under Rule 60(b)). In seeking
13 reconsideration under Rule 60, the moving party “must demonstrate both injury and
14 circumstances beyond his control.” *Harvest*, 531 F.3d at 749 (internal quotation marks and
15 citation omitted).

16 “A motion for reconsideration should not be granted, absent highly unusual
17 circumstances, unless the district court is presented with newly discovered evidence, committed
18 clear error, or if there is an intervening change in the controlling law,” and it “may *not* be used to
19 raise arguments or present evidence for the first time when they could reasonably have been
20 raised earlier in the litigation.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571
21 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted) (emphasis in
22 original). Further, Local Rule 230(j) requires, in relevant part, that a movant show “what new or
23 different facts or circumstances are claimed to exist which did not exist or were not shown”
24 previously, “what other grounds exist for the motion,” and “why the facts or circumstances were
25 not shown” at the time the substance of the order which is objected to was considered.

26 In her motion for reconsideration, plaintiff appears to assert that she could not respond to
27 the findings and recommendations because the prison where she is incarcerated was locked down
28 due to the Covid-19 pandemic. (Doc. No. 17.) Additionally, plaintiff states that she is working

1 alone on her case and suffers from depression, which hinders her ability to do more on her case.
2 The court is sympathetic to the difficulties caused by the Covid-19 pandemic as well as to the
3 personal difficulties plaintiff is suffering. Nevertheless, plaintiff never filed a signed complaint in
4 this action and there is no pleading on file in which plaintiff sets forth any claims. Thus, the court
5 has no basis upon which to re-open this case.

6 Accordingly,

- 7
1. Plaintiff's motion for reconsideration (Doc. No. 17) is denied;
 2. This case shall remain closed; and
 3. No further filings will be entertained in this closed case.

10 IT IS SO ORDERED.

11 Dated: May 17, 2021

Dale A. Drayd
12 UNITED STATES DISTRICT JUDGE

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28